

19-38

COMMUNITY REVIEW BOARD

TEAM # 1

CASE # 2018-0319-OIS

Date of Incident: May 27, 2018
Time of Incident: 2252 Hours
Location of Incident: 2300 Tocayo Avenue, San Diego, CA 92154
Date of Complaint: May 27, 2018
Investigator: Sergeant Greg Minter
Date Assigned to CRB: January 3, 2019
Date Review Complete: March 11, 2019
Date CRB Presentation: March 26, 2019

**CONFIDENTIAL: FOR EXCLUSIVE USE OF CITIZENS REVIEW BOARD AND SDPD
IN ACCORDANCE WITH RESTRICTIONS ON CONFIDENTIAL PERSONNEL RECORDS
PURSUANT TO CALIFORNIA PENAL CODE SECTIONS 832.5, 832.7, and 832.8**

OFFICER INVOLVED: MARTINEZ, Michael A., PO-I, ID #7591 - BWC
Date of Hire: 09-01-2016 (2 years)
S.D.P.D., Southern Division – 2nd watch
[REDACTED]

WEAPON USED: 9mm Glock, model 17 Gen 4, SN #BAGP497
Department issued firearm

OFFICER INVOLVED: CARTER-TORRES, William, PO-I, ID #7709 - BWC
Date of Hire: 08-24-2017 (1 year)
S.D.P.D., Northern Division – 3rd watch
[REDACTED]

WEAPON USED: 9mm Glock, model 17 Gen 4, SN #BAGP319
Department issued firearm

OFFICER INVOLVED: RODRIGUEZ, Samuel, PO-II, ID #6941 - BWC
Date of Hire: 04-27-2012 (6 years)
S.D.P.D., Southern Division – 1st watch
[REDACTED]

WEAPON USED: 9mm Glock, model 17 Gen 4, SN #XFZ969
Personal firearm

SUSPECT:



WEAPON USED:

Knife

WITNESS OFFICERS:

ADAMS, Kristen B., PO-II, ID #5384 - BWC

Date of Hire: 08-25-97

S.D.P.D., Southern Division – 1st Watch



CASTELLANOS, Daniel J., PO-II, ID #6569 - BWC

Date of Hire: 02-19-15

S.D.P.D., Southern Division – 2nd Watch



MUNIZ, Michael S., PO-II, ID #7483

Date of Hire: 10-29-15

S.D.P.D., Southern Division – 2nd Watch



OTHER WITNESSES:

O'NEILL, Eugene, ID #1216

Border Patrol Agent



Allegation	Description	Subject Officer(s)	Witness(es)	IA Finding	Team Finding
1-OIS	SDPD officers were dispatched to a scene where a male, [REDACTED] was armed with a knife. Officer deployed two less-than-lethal force options to subdue the male. The force options were not successful and had no apparent affect. [REDACTED] continued to act in a threatening manner and charged Officer Martinez with the knife. Officers fired their service weapons and struck [REDACTED]	MARTINEZ RODREQUEZ CARTER	O'NIELL CASTELLANOS ADAMS MUNIZ	WP	A
Investigator's Notes:					

CASE NOTES:

Witness statements were obtained by Homicide. Nine civilian witnesses were interviewed but none had a close-up view of the shooting. Five SDPD Officers and 13 Border Patrol Officers were also interviewed. All of their accounts were consistent; only those with the most relevant information (including their BWC video) are mentioned in the team's report.

<u>Check = Reviewed</u>	<u>Resource Item</u>
	Complaint Documents
	Medical Records of Complainant
	Video from Complainant
	Audio Recording from Complainant
	Photographs from Complainant
	Additional Materials provided by Complainant
X	IA Investigation Report
X	Police Officer Reports
X	Police Officer Body Work Camera (BWC) video
X	SDPD HR Profile Sheet(s)
	SDPD Sally Port video
	SD Sheriff Jail Intake video

	SD Sheriff Property Form
	SD Sheriff Medical Intake Questionnaire
	Interview Audio of Complainant
X	Interview Audio of Witnesses
X	Interview Audio of Witness Officers
X	Interview Audio of Subject Officers
X	Interview Audio of Others Contacted
	SDPD Policy & Procedures
X	Other: Homicide Investigation Report
X	Other: District Attorney's Letter
X	Other: ABLE Video
X	Other: Medical Examiner's Report
X	Other: SDPD Communications Printout

INCIDENT SUMMARY:

On May 27, 2018 at 10:52 p.m. U.S. Border Patrol agents were flagged down regarding a man with a knife, acting in a threatening manner, who was standing in the middle of the street at [REDACTED] Tocayo Avenue. At the same time, a passing motorist reported the same thing to SDPD Communications. Several SDPD units responded and found numerous Border Patrol agents holding [REDACTED] at gunpoint in the intersection of Tocayo Avenue and Hollister Street. [REDACTED] refused multiple (several dozen) commands to drop the knife and brandished the knife in a threatening manner toward officers. The scene was chaotic as [REDACTED] ran throughout the intersection, at times charging and retreating from the officers on scene. Officers Joel MENDOZA and Daniel CASTELLANOS deployed bean bag projectiles at [REDACTED] (a total of ten rounds) and Officer Michael MARTINEZ, Officer William CARTER-TORRES (trainee) and his Field Training Officer Samuel RODRIGUEZ deployed Taser guns at him. Officer MARTINEZ' Taser missed [REDACTED] but the other two successfully struck him. Neither the Taser nor the bean bags had an apparent effect in subduing [REDACTED]. When [REDACTED] started to charge toward Officer MARTINEZ holding an open folding knife with an approximately 5 inch blade out toward him, Officers MARTINEZ, CARTER-TORRES and RODRIGUEZ fired their weapons. This is clearly visible at 06:02:45 Zulu Time in the BWC of Officers Kristin ADAMS, William CARTER-TORRES, Daniel CASTELLANOS, Michael MARTINEZ, Michael MUNIZ, and Samuel RODRIGUEZ (the BWC video of Officers CASTELLANOS and RODRIGUEZ have the best view). A still frame from the ABLE video shows that [REDACTED] was approximately the same distance away as the length of a nearby SDPD SUV when the officers opened fire. In their interviews the officers estimated Mr. MARTINEZ's distance as between 10 and 15 feet when they opened fire. The Medical Examiner's report indicates that [REDACTED] had [REDACTED] gunshot wounds [REDACTED]. [REDACTED] fell to the ground, still holding firmly to the knife. After an officer was able to kick the knife from his hand, officers began to administer medical aid to [REDACTED] until paramedics arrived. [REDACTED] was pronounced dead at 11:22 p.m.

Note: There are indications that this may have been an instance of "suicide by cop." The night before the shooting, SDPD responded to a "check the welfare/jumper" call at a freeway overpass on Palm Avenue. When officers arrived [REDACTED] did not appear suicidal or meet the criteria for a 5150 detention, and he was escorted off the overpass and released.

In his statement to IA, Border Patrol Agent Eugene O'NEILL, the first law enforcement officer on the scene, described [REDACTED] as clearly distraught and appearing to be under the influence of drugs. [REDACTED] told Agent O'NEILL that he would have to kill him to get him to drop the knife and repeatedly said "kill me, kill me, kill me!"

DISCUSSION AND CONCLUSIONS:

San Diego Police Department Procedure 1.05, Firearms Procedures, Section III, B, 2, (06/20/17), states in part:

- B. No officer shall discharge a firearm in the performance of duty except:
 - 2. When the officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to the officer or another person.

San Diego Police Department Procedure 1.04, Use of Force, Section III (03/08/18), states in part:

The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its personnel in the use of the safest, most humane restraint procedures and force options currently known. The Department seeks to demonstrate integrity, and make decisions that are fair, respectful, lawful, and based on good judgment.

In the performance of their duties, officers may encounter situations where the use of force is reasonable in order to effect a detention or arrest, to overcome resistance, or to protect themselves or others. Force, as authorized by Penal Code section 835a, and as set forth in this policy, may be used in those situations. The decision to use deadly force in response to an imminent threat of death or serious bodily injury to the officer or another person is one of the most critical decisions an officer will ever be called upon to make.

Only force that is reasonable to overcome resistance may be used to effect a detention or an arrest, or take a mentally ill or emotionally disturbed person into protective custody. The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

Penal Code section 835a authorizes an officer to use reasonable force to make a lawful arrest, prevent an escape, or to overcome resistance. Officers are not

required to retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested.

The evaluation of an officer's use of force will be undertaken from the perspective of a reasonable officer on the scene, not through the 20/20 vision of hindsight. The central inquiry in every use of force case is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer.

San Diego Police Department Procedure 1.04, Use of Force, Section IV (03/08/18), states in part:

- E. Deadly Force - force that creates a substantial risk of causing death or serious bodily injury.

The District Attorney Summer Stephan's letter, dated December 13, 2018 summarizing the results of the review by the DA's office of this case concludes:

In this case, law enforcement officers were confronted by an agitated subject who was armed with a knife and was under the influence of narcotics. [REDACTED] urged officers to shoot him as he advanced toward them. The officers' attempts of verbal de-escalation and use of less lethal methods of subduing [REDACTED] were unsuccessful. [REDACTED] charged at Officer Martinez in such a threatening manner Martinez believed his life was in danger. Officers Carter-Torres and Rodriguez witnessed [REDACTED] threaten Martinez with a knife and also reasonably feared for the safety of Martinez. Martinez fired at [REDACTED] in his own defense and Carter-Torres and Rodriguez shot [REDACTED] to prevent [REDACTED] from injuring or killing Martinez. Based on these circumstances, the officers bear no criminal liability for their actions.

IA determined that Officers MARTINEZ and CARTER-TORRES used Department-issued Glock weapons. Officer RODRIQUEZ used his personal Glock weapon which he was authorized to carry as his duty weapon. Each officer was qualified for his weapon. All three Glock pistols operated normally when they were test fired. The Firearms Unit laboratory reported that all ammunition was Department-issue duty ammunition.

The IA investigation report concluded that: "Based on Officer Martinez, Officer Carter-Torres and Officer Rodriguez's statements, San Diego Police Department procedures, the investigation conducted by Homicide Team V and my administrative investigation, Officer Martinez, Officer Carter-Torres and Officer Rodriguez used their firearms to stop an imminent threat of great bodily injury or death to themselves and other officers. The decision of Officer Martinez, Officer Carter-Torres and Officer Rodriguez to use deadly force was reasonable, legal and **WITHIN** Department Policy and Procedure." Team 1 **AGREES**.

NO CHANGES MADE DURING CASE REVIEW

CRB Team 1 Endorsement	Signature [Redacted]	Signature [Redacted]	Signature [Redacted]
	Date 3/26/2018	Date 26 MARCH 2019	Date 3/26/19
	[Redacted]	[Redacted]	[Redacted]
	Signature [Redacted]		
	Date 3/26/2019		
	[Redacted]		

TEAM CONCERNS AND ISSUES: None